90

4th 835, 877, the errors as the penalty phase of a Capital Case were numereours and serious, Leading to the reasonable possibility that, considered together, they affected the Jury's penalty determination. The Court reversed the Judgment of death.

As in Hill, Cuccia, and Hernandez, the errors in the instant case were numerous and serious. It's reasonably certain appellant would have obtained a better result from a properly instructed Jury, unswayed by the prosecutor's improper and misleading use of Bautista's statement.

B. REVERSAL IS REQUIRED BECAUSE THIS WAS A CLOSE CASE WHERE THE PREJUDICIAL ERRORS HAD A DEVASTATING EFFECT ON APPELLANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

The general rules is that in a close case i.e., one in which the evidence is evenly balanced or sharply conflicting, a Lesser showing of errors Justifies reversal. (6 Witkin & Epstein, Cal. Crim. Law, supra, reversible Error §45, pp. 506-508 [Collecting cases.]) "The close case theory is also applied where there is no dispute in the testimony but the inferences from it are Conflicting" (Id at p. 508, emphasis in original see People v Moore (1954) 43 Cal.2d 517, 530.)

Although not dispositive, lengthy jury deliberations also is evidence the case was close. "The fact that the Jury deliberated almost 22 hours over 5 days practically compels the conclusion" the case was close. (In re Martin (1987) 44 Cal.3d 1, 51; but see People v Walker (1995) 31 Cal.App. 4th 432, 439, [lengthy deliberations could be reconciled with Jury's conscientious performance of it's duty rather than difficulty in reaching decision].)

Jurors questions and requests to have testimony reread are indications the deliberations were close. People vs Pearch supra, 229, Cal.App.3d, at p. 1295; Maupin vs widling (1987) 129 Cal.App.3d 567, 572, 573; People vs Fuentes (1986) 183 Cal.App.3d 444, 456.)

At the onset of deliberations on May 13-2002 the Jury sent this question:

"Are Counts #6 and #7 the same? Why are they 14 Counts as mentioned on page 8. Should it be 12 Counts"? (2CT 491; 17RT 8772.)

Appellant asked the Court to simply answer "No" and refer the Jurors to the last page of the information which reflects the two dismissed Counts. (17RT 8774-8775.) Appellant objected to the Court's further instruction of the Jury (17RT 8778.) The court responded to the Jury questions;

"No. They're two separate robberies pled [90] If you have further difficuly with that, I know myself where the problem is, so if you have further difficuly with it.. the Court will advise you further if you need further instruction." (18RT-9004.)

As to the question relating to the number of Counts the Court explained:

what happened was, you'll recalled after the people Close their case.... I told you there was a motion that the Court had to hear outside the presence of the Jury. [91] As a result of the evidence presented during the people's case in Chief... the court dismissed Count 12 and 13... and therefore, that reduced the number of Counts from 14 to 12" (18RT-9004-9005.)

The next day the Jury asked for:

"① Re-reading from Pedro's testimony[,] the section regarding the ATM receipt and phone call from Bautista and Moran regarding going to the ATM.

"② We have designated Count 6 as the $10.00 and Count 7 as the $300.00 Is this acceptable?"

"③ In Count 6 and 7 Can we separate the defendants or find both guilty or not guilty? [B]ecause both are mentioned in the Count?

"④ We still need verdict forms and master Copy of Counts (2CT 498-499. 18RT 9026-9028)

The Court directed the reporter to read back the requested testimony. (2 CT 505; 18 RT 9045-9047.) The court informed the Jury it could acquit both, convict both or acquit one and convict the other. (18 RT 9032.) The court explained that the "Clean" Copy of the information provided to the Jury was the "Master Copy" (18 RT 9032-9034.)

As to question No. 2, the court intended to instruct the Jurors on the prosecutor's theories regarding these Counts [28] but instead simply referred the Jurors to instruction No. 12.02 so as not to invade the province of the Jury. (18 RT 9048, 9068.) However, it was clear from their question that the Jury was under the impression that one of the robbery Counts was robbery of the $300 from the A.T.M. That robbery was not Charged. Rather, Count 6 was the robbery of $1100 from Pedro Martinez's wallet and Count 7 was the robbery from his Constructive possession of the money in the Taco Bell Cash drawers.

Appellate asked the Court to instruct the Jury that the people were not prosecuting appellant for the robbery based on the robbery of the ATM. (18 RT 9059.) Counsel stated, "I think they do need to be told what the people's theory is as to those two robberies" (18 RT 9061: 3-4.) This was so because all along the prosecutor insisted the two robberies

[28] The Court annotated the Jury's question from thus: "14 Counts - 12 Counts and 13 were dismissed by ct at the end of π"s case.

NO: Taco Bell money.
"$ in Martinez Wallet." (2CT 491.)

were the $10.00 and the $225 taken from the register at Taco Bell. Half the Jurors could convict on Count 7 based upon the $300 taken from the ATM and the other half based on the money taken from the cash registers (18RT 9062, 9064.) The Court reversed its position and decided to tell the Jurors that Count 6 referred to the $10.00 and Count 7 referred to robbery of the cash registers at Taco Bell, and so informed the Jury. (18RT 9020, 9304, 9307, 9308.) By now of course, the Jury had been deliberating for two days under a false assumption.

The Court still had not given the verdict forms to the Jury at the end of the second full day of deliberations. (see 18RT 9023.) Finally at the beginning of the third day's deliberations the Court provided the verdict forms. (18RT 9303) The Jury deliberated all of the third and fourth days May 20, 21, and reached a verdict at the end of the fifth day, P. May 22. (18RT 9901, 10501.)

The combination of Jury Confusion over the counts and the Court's indecision and lack of preparation, in Conjunction with the Jury questions and requests for rereading of testimony, demonstrates profound Juror Confusion and reflects a very close case. Accordingly, serious errors at trial and Chaotic deliberations Cast severe doubt on whether appellant Bautista obtained a fair Trial. His Conviction should be reversed.

ARGUMENT

Appeal from the post-Judgment Restitution Order No. B124565

Ground # 8

THE TRIAL COURT ERRED IN IMPOSING A $41,000 RESTITUTION FINE BECAUSE THIS SUM FAR EXCEEDED THE VICTIM'S ACTUAL NET LOSS

Pedro Martinez had been compensated through the workers' Compensation Act and the United State Unemployment fund for most of the damages he suffered as a result of the Crimes. (RT5-10-14-16-17) Nonetheless the Court ordered appellants Jointly and severally to pay restitution in the amount of $41,094.34, and directed Martinez to use the restitution money to reimburse the workers' Compensation insurer (Gallagher Bassett) for sum expended on his behalf. (RT29 CT92) This was error because it amounted to an end run around the principle established in People vs Birkett (1999) 21 Cal 4th 226, that restitution dallors do not go to insurers, result in a doble recovery, and deprived appellant of his Eighth Amendment right to be free from cruel and unusual Punishment. (RT25)

A. STANDARD OF REVIEW

This issue requires construction of section 1202.4, subdivision (F). Construction of a statute is reviewed de novo, with the aim of implementing the intent of the Legislature or, in this case, the intent of the people who voted for Proposition 8. (Eg., People vs Kennedy (2001) 91 Cal. App. 4th 288, 291.)

In Proposition 8 the people expressed an unequivocal intention that "all persons who suffer losses as a result of Criminals. (Cal Const., art I §28 Subd. (b) This measure requires restitution to direct victims who have suffered actual losses. (People vs Birkett supra, 21 Cal. 4th, at p. 244.) Penal Code section 1202.4 Subdivision (F) implements that measure. It provides:

"In every Case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record."[29]

[29] The prosecution relied on Gov. Code section 13967 as the basis

for awarding restitution to the victim. (CT 66.) However, that section was repealed long before the restitution hearing. (Stats. 2002, ch. 1141 § 10.)

B. REQUIRING DEFENDANT TO PAY RESTITUTION AS A PASS-THROUGH TO THE WORKERS' COMPENSATION INSURER VIOLATES THE PLAIN LANGUAGE OF § 1202.4

In People vs Birkett, supra, 24 Cal 4th 226, the defendant purchased private insurance. The trial Court diverted part of the restitution award to reimburse private insurers and the Court of Appeal affirmed the order. Our Supreme Court reversed holding that insurers are not "direct victims" as envisioned by the plain language of [then] section 1202.4 which governed restitution to be made by probationers to "direct victims" (Id at p. 244.) Birkett Court further observed that the line between probationers and incarcerated person no longer exists. (Id at p. 247 fn 21.) Therefore the rule in all cases, probation and non-probation, is that the insurer is not entitled to recoup benefits through section 1202.4[30] yet, the Court allowed exactly that when it ordered Martinez to deal with the workers' Compensation Board in reimbursing it from sums obtained from defendants (RT 29.

This is what happened. Dr Nehorayan treated Martinez from September 2001 to April 2003 for psychological injuries suffered as a result of the kidnap and robbery at Taco Bell, (RT 4, 13.) The

98

30

We note this is not a case like People vs O'Casey (2001) 88 Cal. App 4th 967, a fraud case where the workers' Compensation insurer itself was the direct victim of the Criminal act and entitled to restitution. (See also People v Moloy 2000) 84 Cal. App. 4th 257 [direct restitution to insurers properly ordered upon Conviction of Conspiracy to present false and fraudulent Claim to those insurers].)

Prosecution sought restitution of $10,160.75 + $4,934.44 for medical benefits paid by the worker's Compensation insurer attorney fees of $8,250 to pursue a permanent disability award of $55,000, $26,000 in lost wages and costs for six more months of psychiatric care even though Martinez was now working and no longer seeing Dr Nehorayan. (RT 20-21-25-26.)

The Court awarded $10,160 for doctor's Care $4,934.34 for medication and $26,000 for Lost wages, for a total of $41,094.34. The Courts instructed Martinez

"[W]hen you receive... restitution, you're going to have to work out with them [The worker's Compensation Board] what they need to be reimbursed for and that's something that you Can't forget to do, okay?" (RT 29-17-22.)

A Trial Court should not permitted to make an end run around the plain language of section 1202.4 by ordering reimbursement to the worker's Compensation insurer through the direct victim. A Trial Court should not by Judicial fiat decide that doing so is an appropriate exercise of the court's power. (Cf. In re Kenneth H. (1983) 33 Cal 3d 616 621.) The order imposing restitution to Martinez so he can in turn reimburse the worker's Compensation insurer should be reversed.

C. IMPOSING A RESTITUTION AWARD ATOP THE WORKER'S COMPENSATION BENEFITS GIVES MARTINEZ A DOUBLE RECOVERY

Under Birkett, the order requiring Martinez to reimburse the worker's Compensation Carrier from restitution proceeds Cannot stand as a matter of Law. The award should also be vacated to avoid double recovery-it exceeds Martinez' net Loss because he already has been Compensated for all of his medical Loss and most of his Loss wages by the worker's Compensation insurance Carrier.

Appellant objected to restitution in the full amount of medical benefits because these were benefits to Mr Martinez, not Loss, and he bore No Liability for these Costs. In addition, Martinez received a $55,000 award for permanent disability from the worker's Compensation Board. Appellant objected to making Lost wages the State Paid Martinez as unemployment benefits an element of restitution because that, too, would Constitute double dipping (RT 5-10-14, -16-17.)

100

This is not a situation like that in Birkett where the victim insured himself against loss and paid the insurance premiums (People vs Birkett supra 21 Cal.4th, at p.247.) As the Court observed, "[there is no great novelty in the notion that a person injured or damaged by the wrongful Conduct of another even after partial or full reimbursement from an independent source" (Id at p.142 fn.19.) The rationale supporting the Collateral source doctrine is that a victim should not be penalized because he or she "had the thrift and prescience to purchase insurance and the investment represented by the victim's payment of insurance premiums would earn to benefit if they served to mitigate his tort damages" (Ibid) But, the victim does not reap a double recovery. Typically, the insurer assets a lien against any recovery in tort. (Ibid.)

In sharp Contrast, worker's Compensation insurance is not something the injured employee has bought and paid for, and benefits are not triggered by wrongfull Conduct. Rather, pursuant to State Constitutional mandate, the California worker's Compensation Act provides for a Compulsory scheme of employer no fault Liability for injuries arising out of the Course of employment, (Cal. Const, art. XIV, §4.) The purpose of the Act is to provide Coverage for Medical, Surgical, hospital, and other remedial treatment as a requisite to relieve the damaging effects of an on-the-Job injury. (Fitzparick vs Fidelity & Casualty Co. (1936) 7 Cal.2d, 230, 233.) An employee who sustains a work related injury is Limited

101

to recovery under the worker's Compensation system (Lab. Code § 3600.) Under this exclusivity rule, the injured worker obtain relatively swift and Certain benefits without having to prove fault. In exchange, the employee give up the wider range of tort remedies. (Torres vs Parkhouse Tire Service, Inc. (2001) 26 Cal 4th 995, 1001.) Courts "must be vigilant to preserve the spirit of the act and to prevent a distortion of its purposes" (Scott vs Pacific Coast Borax Co. (1956) 140 Cal App 2d 123, 128.) Just as an injured employee give up tort remedies in exchange for workers Compensation benefits for which he paid no premiums he should be deemed to give up restitution fines which otherwise effectively provide a double recovery. As counsel explained, because of the worker's Compensation Act Martinez suffered no net loss generated by medical expenses. Rather, he received a benefit Conferred by the worker's Compensation system, and that is not the same as incurring an actual loss and being made whole for that loss (RT 15-12.) Put another way, ordering the defendants to Compensate Martinez for a benefit he has already recieved doubles that benefit. That is unfair and unjust. It distorts the goal of the restitution statute that real losses be address through restitution.

D. THE $26,000 AWARD FOR LOST WAGES SHOULD BE REDUCED TO $11,880 THE AMOUNT OF MARTINEZ ACTUAL LOST WAGES

The $55,000 award for permanent disability takes into effect that Martinez will not be a wage earner like he was before. (RT 14.) Putting that aside, Appellant Conceded that Martinez' temporary disability payments through worker's Compensation did not Compensate him for the full amount of his lost wages for the relevant period from July 1-2001 to March 31-2003 or 33 months. (RT 8.) The difference between what he would have earned was $360 per month, or $11,880 over 33 months. (RT 10.) yet, the prosecutor calculated the wages loss without any regard to offset (RT 21) and the Court awarded $26,000--more than double Martinez' actual Loss. Again this is unjust and unfair, and abhorrent to the rationale behind the restitution statute that it is true losses that are to be Compensated. If the restitution fine is upheld at all, it should be reduced to $11,880 so that Martinez' compensation is limited to his actual Lost wages.

E. THE RESTITUTION FINE SHOULD BE REVERSED BECAUSE IT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT OF APPELLANT AND HIS FAMILY

The Eighth Amendment of the Federal Contitution prohibits Cruel and Unusual punishment. The defense objected to the restitution fine on the Eighth Amendment grounds. This was not a good faith attempt at restitution. Instead, the real purpose of the fine was to impose additional punishment under the guise of restitution. It was Cruel and Unusual Punishment became the defendant would never see a dime in the off Chance they ever get out of prison to do any work. The

103

Prosecuter "Just wants to get a pound of Flesh and another pint of blood" (RT25.) Moreover, sums family members provides for some small comfort in prison will be subject to the restitution order. (RT 26

In sum, given the fact that Martinez' true economic Loss was approximately $11,880 it was misuse and distortion of the restitution laws to impose a $41,000 order for restitution. Appellant asks that the order be vacated in its entirety or, in the alternative, that a new order be entered limiting the restitution amount to $11,880.

For the reasons given herein, Appellant requests that his conviction be reversed on all counts. In the alternative, the restitution fine should be reversed or reduce to $11,880

ELMER R. BAUTISTA Police Report

Mr Bautista gave the following Statements

(1)

Mr Bautista is a taxi driver by profession. On Friday night June 29-2001. Two friends namely "Paco and Meno" asked Bautista if he had any plans for the following Sunday night July 1-2001. Bautista told Paco and Meno that he would be available on the night in question Paco and Meno. Then told Bautista that they wanted him to drive them to Glendale on Sunday night.

(2)

As previously agreed upon Bautista drove Paco and Meno to Glendale that following Sunday night Bautista drove his Chev, Caprice. Bautista was directed to a "Taco Bell Restaurant" Bautista parked on the street South of Taco Bell Meno then ask Bautista if he wanted to make some money. Bautista inquired how the money would be maded? "Meno" replied that he was a friend of a "Female employee Janette" at Taco Bell who was going to give him money. Bautista warned Meno that he would tell the police everything if the money was obtained illegally Meno got out of Bautista Caprice and entered a "Gray Honda Accord parked on a side street near a Taco Bell

(3)

Thereafter Bautista saw "Paco" slash the Tires of a Car park in the Taco Bell parking Lot. Bautista and Paco Later followed the Same Car to a parking Lot in a shopping

#1
103

Center Close to Taco Bell "Janette" and a male employee of Taco Bell occupied the Car at the shopping Center parking Lot the male and Janette repaired the slashed tire that was Cause by Paco.

(4)

Bautista approached the male and Janette and as instructed by Paco he was told to move their Car to a side Street near the shopping Center Janette was inside the Car when Bautista was ask to move it from the shopping Center to the side street Meno was now also parked on the Same side street near the Shopping Center in his Honda Accord

(5)

Bautista then drove the male to the Taco Bell and to the Bank of America in his Chev Caprice. Upon Bautista return with the male from Taco Bell and the Bank Paco was still in the Car with Janette Bautista saw that Janette was crying and this angered him (Bautista)

(6)

I asked Bautista if he recalled being stopped by a police officer while he had the Taco Bell employee in his Caprice? Bautista recalled the incident saying that the officer Stopped him because the License plate on the back of his Car was not showing. Bautista said that he gassed up the Car somewhere on Broadway after arriving at Taco Bell and probably forgot to flip the License plate up after gassing up.

(7)

Bautista denied that he was armed with a handgun during the robbery and said he received #40.00 for his part of driving

104

people around.

(8)

Bautista denied that he sexually assaulted Janette.

(9)

At the Conclusion of the interview Bautista agreed to show us where Meno and Paco Lived.

(10)

Bautista directed us to a multi unit apartment building at 854 Harvard street in Los Angeles. Bautista said that Meno sometimes resided at the Harvard address with family members. Bautista stated that Meno's sister was the apartment manager and that she resided in one of the first three apartments on the right hand side of the first floor. Bautista said that Meno cell phone number was (213) 278-9614

(11)

Thereafter Bautista directed us to 3649 3rd Avenue in Los Angeles Bautista said that Paco Lived in a detached residence at the rear of the residence a 3649 3rd Avenue Bautista said that Paco Lived in a small house with his wife and two children Bautista show us Paco Gray Toyota 4-Runner parked across the street from 3649 3rd plate Bautista had described the 4-Runner and paper plate to us prior to our arrival. Bautista said that Paco Cell phone number was (213) 841-5740

(12)

Bautista was Transported to Glendale City Jail where he was booked and Confined.

At approximately 0200 hours I spoke to Bautista at the Glendale City Jail with the assistance of C.S.O. Jailer Elsa Urquizo. Bautista told me the Last time he was at Paco residence on 3rd Avenue in Los Angeles was previous Saturday Night June 30-2007. Bautista sketched an outLine of Pacos residence for me The sketch has been saved as evidence.

Evaluating Statements by Mr Bautista and why Mr Bautista is guilty of the robbery, but not the Kidnapping or any sexual assaults.

Reviewing the police report

Bautista Says he dose not want to be involved in any ilegal things or he will tell the police everything.

(Question) (1)

when he witness Paco slashing tires, why didn't he Just Leave? or why didn't he make a phone Call to the police and report a crime was being Commit to someones Vehicle Like he said he would? Instead he follows the Vehicle "WHY?"

Bautista says that Paco and Meno had ask him if he Could give them a ride to Glendale on Sunday night. And Bautista respond yes.

(Question) (2)

Why did the boys need Bautista? Bautista Says Meno was on a Gray Honda Accord park on a side street waiting on "who or what?" And if the boys had a vehicle, this tells the Court Petitioner Bautista services were not needed, so why was he there?

Now take notice there's now Three Cars involved. Petitioner Bautista "Chevrolet Caprice" Meno's "Gray Honda Accord" and Pedro Martinez Brown Honda the Pedro and Janette were in

Evidence and statements on Bautista Police Report proves that there's is more to the case than it's being told. For example notice the dates. They meet on Friday June 2-2007 then they put the plan together on Saturday June 30-2007 at paco's house at a party and Execute it on Sunday July 1-2007

Another example Petitioner Bautista is instructed to take Pedro Car and move it. He's taking orders from Paco.

By the statements Mr Bautista gave to the police trying to make himself an innocent by-standard. Unknowingly he has told the Court of his involvement with the robbery Concerning the Taco Bell incident.

Ground # [redacted] 9

Petitioner Conviction was obtain do to Ineffective Assistance of Counsel. A Violation of Petitioner's 6th and 14th Amendment Due Process. therefore Petitioner Challenges Counts 4-14 Oral Copulation Rape

Supporting Facts

Defense Attorney showed no interest or assistance when Mr Bautista was being falsely accused of Counts of Oral Copulation or Rape.

Defense Attorney did not move to Clearly make the Jury understand that D.N.A. from experts Clearly excluded Petitioner of any sexuals assaults

Defense Attorney action and a non-interest in Petitioner Case presented no interest of the fundamental right of Petitioner and deprived him his due process.

108

Petitioner was being falsely accused and Convicted of Committing Rape and Oral Copulation against (Janette A.) when the victim with her own testimony stated. It was Moran who had Commit the Rape and not the Petitioner (vol-5-935-936-937.) Then again Expert witness testify that the D.N.A. excluded the Petitioner Bautista as the semen donor "But found a match to Moran" Then Janette Said that Petitioner had removed the tape that held her hands tie with his teeth. yet expert did not find any saliva or any mention of any teeth marks seem to have appear on this tape that was brought in as evidence also see (8-RT-2726) and (8-RT-2434 2435) (5-RT-943) Petitioner base his argument on Evidence presented on Transcripts. Which points out that there is substantial evidence without a doubt of innocence. Petitioner also argues that the Court itself was put aware of the wrong doing, that the Court seem to ignore. (5-RT 1041) Petitioner ask the Court to witness what Judge Nancy Brown was address Concerning this Case on The "Taco Bell Robbery" also presented will be Evidence of False Accusation, Contradicting Statements Perjury, and How everything Janette and Pedro testify to is Fabricated.

Contradiction, Fabrication Perjury False Accusation

Comparing Pedro Martinez Testimony and Janette Alcazar. Also Questioning their statements.

Comparison on Victims Testimonies Concerning the Taco Bell Robbery CREDIBILITY

Pedro Martinez 4-CT 98-3-8

Q. Now could you describe the Lighting Condition at the shopping center on windsor and Centeral?

A. yes it was (very bright a Lot of Lights) All the (other stores had their Lights on inside the shopping Center) the shopping center it's self has different Lights in the parking Lot it's (Like daytime.)

Janette ALcazar 5-CT 921-2-7

Q. The car in? would you Please tell me, Could you describe what was the (Lighting Like in the shopping Center) area that you called the Plaza?

A. (It was dark) there was--- (It was really dark.) There were no car nobody.

Janette ALcazar 5-CT-923-25-27

Q. Are there (Lights on the building of the shopping Center) if you remember?

A. (NO)

Janette ALcazar 5-CT-923-12-15

Q. And is that street (ILLuminated by the street Lights?)

A. They're (hardly any street Lights) There is but not a Lot (Not much)

Pedro Martinez 4 CT 100-2-10

Q. Okay, Then what happened?

A. Then (she says the guy has a gun.)

Q. what did you do in response to hearing that?

A. I stand up and I Looked towards, towards Centeral (And I saw this guy Coming with a gun in his hand pointing down) and with a hat on his head.

Janette ALcazar 5-CT-926-6-4

Q. what happened next?

A. After the Car disappeared suddenly - well, I ignored it and we started - Peter was changing the tire, And suddenly this guy Comes in from the driveway with (I Guess) he was Coming Like fast towards us. And he--- (I Guess he had a gun) and he told us (Don't Look at me turn around if you don't I'll shoot you guy and we---)

Pedro Martinez 4-CT-366-18-22

Q. What happened next?

A. He keep talking to me and also reminding me (not to Look at him.) And asking me about the safe. That if I didn't Cooperate they were going to kill me

Pedro Martinez 1. 4 CT 102-22-26

A. I didn't do anything I Just stood there until (He hit me) Then saying he wasn't Playing. that he wanted me to get (inside my Car) with Janette in the back of my Car.

Janette ALcazar 2. 5-CT 929-15-18

So he Jumped to the front, and then Peter Could find the Keys so he (Punched Peter on the stomach with his elbow)

Pedro Martinez 3. 4 CT 324-2-8

A. Some Kind of sticky tape

Janette ALcazar 4. 5 CT 975-7-8

A. yes it was Like---There was---it was Like "another--"

Comparision is Obvious

(1#)

Pedro says he was being punched/hit when he was outside of his Vehicle by Bautista.

(2#)

Janette says Pedro was punch in the stomach by Bautista inside the Car by Bautista elbow because he Couldn't find the Keys

(Bautista response)

when Pedro was examine for any bruising injury Marks or signs of anyKind of Physical beating Nothing was ever found yet he claims that he was being beat at Taco Bell in the Car outside the car in the parking Lot and being hit with guns and yet not a mark was found to support his statements.

Pedro says it was someKind of stick Tape that Bautista had bound his hands with

Janette in the other hand seem to not really think this was the tape that bound her hands above her head.

(Bautista response)

The tape that was present in Court was a tape that is use in Taco Bell to seal Boxes. And it was bunchup and what seem to be hair on it see (Declaration) and see how this hair got on the tape, Then on (5-CT 942) she maded a statement saying Bautista had use his teeth to rip the tape off her hands. However Evidence would have shown saliva, or teeth marks, or finger prints, of Bautista yet nothing was ever found why?

Take Notice of Statements maded by Pedro & Janette.

Pedro Martinez 4-CT 324-16-21

A. My answer was that I assume he wanted to go and take the money from Taco Bell.

Bautista's Response

Take Notice no one had said or even hint anything about Robberying Taco Bell so why would Pedro say that to a

Supposely Stranger. How would Pedro Know what Bautista intentions were unless Pedro already Know a robbery was to take Place.

Take notice how Pedro trys to Protect (Paco and Mino) 4 CT 341 their talking about when Pedro and Bautista return to tell Mino what had happened when the police pull them over because of the plates

Pg. 341.

Q. Did you hear Janette speak to him when he pulled up next to your Vehicle

A. No.

Q. Did you see Janette when you pull up next to your Vehicle?

A. No

Q. Did you Know who was inside of that Vehicle?

A. I Know Janette was there with some one else.

Pedro Martinez 5-CT-101-20-21

A. He asked me if the Car was ready. I the tire was fixed already?

Bautista Response

Anyone would Know that if a man with a gun which you've seen and Looking very suspicious who intentions are to Rob you, Beat you, Kidnap you, and have his way with your female friend. The last thing in his mind is the Concern if you flat tire is fix and if your Car is ready.

[redacted] 114

Janette ALcazar 5-CT-942

Janette said that the second time Bautista came into Pedro Car, That he showed Concern and ask her if Paco had harm... Then tell her okay pull your pants off And when she refused he then made her put his penis in her mouth.

Ground 10

Petitioner Conviction is based on mere Speculations and a Miscarriage of Justice Which petitioner will present to the Court Evidences and not speculations that said Counts do not apply to Petitioner in a Motion Fashion

Supporting facts

Petitioner base his arguments on the evidence that he will presented And on that the prosecution fail to present evidence in supporting any of the counts that were imposed. Petitioner was accused and Convicted, do to ineffective assistance of Counsel and mere speculation. And no real substantial evidence of said Counts. These arguments will present what the witness / Victims said did or accused, Bautista of doing, then see how it involves Bautista and how the Courts allowed Bautista to be use as an Escape goat. The Court will witness questions and answers that will prove Bautista is innocent with out a doubt.

Requesting Dismissal on said Counts 4-14-1-2-5-6-7 See why on the Taco Bell incident, and a full dismissal on The EL POCO LOCO incident

116

Elmer R. Bautista V-34019
P.O. Box 3471-3C02-102
CSP Corcoran Ca, 93212-3471

In Propria Persona

United States Southern District Court

Elmer R. Bautista
Petitioner
vs
Darrel Adams
warden & Respondent

Case No. GA-051210
Motion Requesting Dismissal Penal Code 995 on Counts #4 #14

Count (4) 288 (a) (c) (2) Oral Copulation - Count (14) 209 (b) (1) Kidnap (of Janette A.) to Commit rape.

Allegations against Mr. Bautista

I was said by Janette that Mr. Bautista had Came and got into the Car where he earlyer tied her and Pedro Martinez with some sticky tape (4RT 323-324 5RT 677 929-930) which later that same night removed this tape by using his teeth placing his mouth on the sticky tape and pulling it off of her with his hands. Then she accused Bautista of Masturbating and making her put his Penis in her mouth by Force and making her suck his Penis. Here's why evidence will prove to the court that all her testimony is Fabricated.

(1) Janette Claimed Petitioner Bautista "Came into the car" where she was tied up.

(EVIDENCE)

Expert witness testify in Trial that they had went through the "inside of the Car Looking for Fingerprints. And there was no fingerprints of Mr Bautista found inside the Car.)"

(2) Janette Claimed that it was Mr Bautista who tied her and Pedro up with a sticky tape and it was Mr Bautista who drove Pedro Car. And then later that Night that it was Mr Bautista who untied her by using his teeth to rip of the tape off by placing his mouth and hands on the sticky tape.

(EVIDENCE)

Expert witness testify in Trial that they check the tape that supposely had hair from Janette head. But "(DID NOT)" find any ("Teeth Mark") or Mr Bautista "(saliva or his fingerprint)" on the tape or Car.

(3) Janette claim he had mastrubated

(EVIDENCE)

Expert witness testify in Trial there wasn't any semen of Mr Bautista found in the (Car) in (Janette Body) or her (Clothes) And there was (No fingerprints) found in the (Car) she Claim Mr Bautista got in, to make her do any of the things she claim happened between her and Mr Bautista, this offense's Never Happened. Yet the Jury Convicted of these Two Counts (4) (14) without evidence and because Petitioner Bautista had no representation when it came to his due process, Or effective Counseling.

Making it Clear

EVIDENCE

Expert D.N.A. witness

Stated in Court that there was no evidence of Mr Bautista ever being inside the Car with Pedro Martinez or Janette A. The experts dusted for Fingerprints, Salvia, hair, blood, or Semen inside the Car and found nothing that would link Mr Bautista as being in this Car of Pedro Martinez, not even on the sticky tape. Read the victims testimony and you'll see that these victims state Mr Bautista was inside the car doing all kinds of things. So why isn't any thing found that Links Bautista? Now the evidence are here yet the Courts in the state level insist on ignoring the truth.

#19

Elmer R. Bautista C.D.C. NO, V-34019
P.O. Box 3471-3C02-102
C.S.P. Corcoran #1
Corcoran Ca, 93212-3471

California Supreme Court

In Propia Persona;

Elmer R. Bautista
Petitioner
-VS-
D. Adams
Warden

Case NO, GA-051210
Motion to request Counts 1 2 5 6 7 to Be dismissed
P.C. 995

All said Counts are P.C. 211/2nd degree robbery. Petitioner presents the California Supreme Court with arguments and evidence, that said offense do not apply to him, And that said offense's never took place NO #1 #2 #5 #6 #7

FACTS

It was alleged that Mr. Bautista was one of the individuals that had in fact Commit the robbery against Mr Martinez Taco Bell and again of a sum of $10.00 from Martinez and for the third time he was accused of a 211 second degree burglary of Taco Bell.

Evidence

In response to these Charges Petitioner presents arguments and request the Court to review statements that were presented on prelim and Trial. Now on the Charges of Robbery not anywhere in the whole Trial dose it.

Show or present Mr Bautista robbing anything in fact a Taco Bell Surveillance Cameras hard drive shows Mr Bautista intering the Taco Bell and his walking behind Mr Martinez and his hands are in his back pockets. These are the images that were pick-up by the surveillance Camera. However I ask the Court to review Mr Martinez actions and to witness how he Volunteerly dose things on his own without being asked by Mr Bautista.

Mr Martinez after realizing that it would be impossible to get into the safe. He gets a plastic bag from behind the Counter goes and opens all three registers takes the money from them places the money in this plastic bag and hands it to Mr Bautista. However the the alarm never goes off, because Mr Martinez "TURN IT OFF." And yet has the nerve to say Mr Bautista assaulted him, when expect witness found no evidence to support that they were an assault. And no where on the Trial or prelim dose it say Mr Bautista ask him to do any of the above. And to add salt to the wound he Claims he threw in $10.00 dollars of his own pocket, plus $300.00 from his own personal saving, and lets not foreget he accused Mr Bautista of removing the surveillance Camera flim, Mr Bautista said he open it and ask me to take it because he had the "KEY". Mr Bautista addmits he was aware of what was happening. And Mr Bautista addmits to being a accomplice to the robbery. But he wasn't alone on this. yet Mr Martinez got rewarded $4,000.00 dollars for Committing a Crime. And Mr Bautista recieved

Show or present Mr Bautista robbing anything in fact a Taco Bell surveillance Cameras hard drive shows Mr Bautista intering the Taco Bell and his walking behind Mr Martinez and his hands are in his back pockets. These are the images that were pick-up by the surveillance Camera. However I ask the Court to review Mr Martinez actions and to witness how he Volunteerly dose things on his own without being asked by Mr Bautista.

Mr Martinez after realizing that it would be impossible to get into the safe. He gets a plastic bag from behind the Counter goes and opens all three registers takes the money from them places the money in this plastic bag and hands it to Mr Bautista. However the the alarm never goes off, because Mr Martinez "TURN IT OFF." And yet has the nerve to say Mr Bautista assaulted him, when expert witness found no evidence to support that they were an assault. And no where on the Trial or prelim dose it say Mr Bautista ask him to do any of the above. And to add salt to the wound he Claims he threw in $10.00 dollars of his own pocket, plus $300.00 from his own personal saving, and lets not foreget he accused Mr Bautista of removing the surveillance Camera flim, Mr Bautista said he open it and ask me to take it because he had the "KEY". Mr Bautista addmits he was aware of what was happening. And Mr Bautista addmits to being a accomplice to the robbery. But he wasn't alone on this. yet Mr Martinez got rewarded $4,000.00 dollars for Committing a Crime. And Mr Bautista recieved

122

26 years 8 months plus Two Life sentences Just for being there and the Attorney use him as an "excape goat."

Ground [redacted] 10

Petitioner Presents the Court with his own Personal Declaration for the Court to review and Compare to the Ground argued.

Supporting Facts

Petitioner Declaration is what actually happened and Petitioner Bautista's intentions are to clear up the record and hope this Case is Presented to Judge Nancy Brown so those who have benefit and used Bautista for an except goat won't go unpunish by the law I've separate these two Case so that my arguments and evidence may be more clearer to the court and so I can resentence me and see that the only thing I wish to plea guilty to is The Robbery,

My next writ will soon follow

Thank you

Declaration

Mr Bautista introduces, to the Court his personal declaration of what actually happened. Concerning the robbery that had taken place on the date of July 2-2007 at a Taco Bell Restaurant... And why it is "NECESSARY" that the Court reviews this declaration and Petition and all it Contents. Petitioner with the assistance of another inmate here in Corcoran State Prison wishes to exercise his right to be heard as to what he was told to say nothing of what he Knew by his Defense Attorney. Bautista request that after reviewing this Petition that he is hereby ordered by the Court to return and be brought before the Honorable Judge Nancy Brown who he feels is the only Person in the Court who Knew Bautista was innocent of Some Charges... Such as (288 (a) (C) (2) Oral Copulation on (Janette A.) (209 (b) (1) Kidnap of Janette A.) to Commit rape.) Mr Bautista request to be heard and to Comfront those individuals who were as much involved and participated in this Crime. Of the Taco Bell Robbery... And those who have benefit at the expense of sentencing Mr Bautista to Life in prison. Petitioner will present his encounters with each of the individuals and will present error that these individual made in their testimony which will expose them as being involve and Knowing Mr Bautista.

Antonio Moran AKA Paco - Guillermina Jimenez AKA Mino Elmer Rokael Bautista - All Knew each other from parties gathering and in many occasions they met or Came across each other path because of Mr Bautista profession as a

[redacted]
1204

Taxi driver. Petitioner Mr Bautista first encounter with a (Ms Janette Alcazar) was I believe a year or so prior to this incident of the robbery on Taco Bell. In many occasions Mr Bautista pickup Janette A. at her Job, and shopping Centers, Parks; and at parties, or Just gathering. In many occasion Bautista would party with Janette and he remember being introduced to (Pedro Martinez). He remember giving them rides to their homes and at time motels. And when it wasn't Pedro Martinez it would be Carlos, Moran, or Guillermina, and on occasion Bautista she was Known as what Hispanics call a (Muñeca) in Translation is a (Toy Doll) or Just a (Toy) which is something you play with for awhile and when tired of it you Just put it away til you get the need to play with it again. Therefore being pick out of a photo line up or Knowing Bautista by Janette A. and Pedro M. was no great Task. in their behalf.. Also Petitioner dosen't wants the Court to think that Petitioner Bautista is here to get vengeances against anyone Petitioner is making this declaration so that the Court may see what actually happened and how it all came to be.

A.

On Friday night Petitioner Bautista was Call on his Cell Phone and ask to meet with Paco and Mina at the home of Paco sister house or/Apartment. when he arrive the men went outside to talk the Men present were Paco, Mina, Carlos, Pedro, and Bautista, the plan was to make it look like a "Pedro and Janette" were force to assist Bautista and Paco and Mino in the robbery. The plan was that Pedro and Janette Vehicle got a flat and they had stopped to repair it.. (THE TRUTH) the

Car Janette and Pedro were on "NEVER" did have a flat tire, they slash the spare tire with a Kitchen Knife. That's how Janette Knew a Knife was used, and she also Knew where the slash was because she witness the tire being slash by Paco we all witness it. And it wasn't a slash it was a stabbed. So as to the statement she maded as to her discovering the slash on the tire in the dark this is not so.

B.

As to the Car-Jack it was Lay-out on the ground for show in case some-one got suspicious [I] If the investigators would have taken real notice they would have found the Car-Jack was Just carelessly drop feets away from the car and nowhere near the tire that supposely had been flaten. Janette part in The Taco Bell robbery at this time was to be a Look-out while the men made their plans and to all agreed on what was to take place, And what they needed to Know, when Janette warn the men that a Cop was patroling the area. So they moved to a different Place on a side street

C.

Bautista and Pedro got into Pedro Honda and Pedro was driving that's why Bautista finger prints were never found on Pedro steering wheel. Bautista "NEVER" drove Pedro Car, and Janette was never with them, because Pedro and Bautista were talking about what had to be done.

D.

Paco and Janette had to switch cars with Pedro and Bautista and Mino was standing as Look out as everyone else was switching Car Mino Job was to sit there with a Cell Phone waiting to hear from Bautista and Pedro Letting him Know if anything goes wrong. And Paco and Janette were fooling around in Pedro Car in the back seat, It was said that when Paco and Janette were in the back fooling around and Paco was on top of Janette that Janette had layed her head on some sticky tape that is use in Taco Bell to wrap boxes up with therefore when the subject of a sticky Tape being use to bound Pedro and Janette hands came-up Petitioner was dump-founded and Confused, for the mere fact that, Petitioner had no idea what they were blameing him for. Then Janette makes the statement about Petitioner Bautista rip it off her with his teeth (942) yet no saliva of Petitioner was ever found on this sticky tape.

E.

During the time Pedro and Bautista left, Mino was keeping his girlfriend inform of what was going on and who was doing what, and with whom. Mino girlfriend was involved Then Pedro and Bautista set out to do their part when they were pull over by a police Car because the License plate wasn't on right and they needed to fix it. When the police officer Came up to the car he had a Flashlight and was Looking in-side the car. Pedro advise Bautista to keep quiet and he'd do all the talking because Bautista dose not speak any english any barely understands it. Bautista was ask for his License and he response that he had left them at home. However as the officer Continue on asking question Bautista found him-self dumbfounded for the simple reason that Petitioner Bautista "Dose NoT understand English or Reads or write it!" Therefore Pedro found himself in a situation where he Knew he had to do something to Protect his mission and his Accomplice's therefore he became the Translater for Bautista.

(Here's the evidence) that also Proofs Pedro was an accomplice's as well as an inside man.... TAKE NOTICE., Pedro Claimed he was being Kidnap, against his will and that Bautista held a gun to him and that he was be^en^ beaten, and threaten.... However Pedro and Bautista are being stopped by an officer and the Opportunity to say something to the officer presents its self, and he dosen't. Remember, Bautista has no idea what Pedro and the officer is saying to each other, so why not tell the officer he's being Kidnap Beaten Threaten and there's a gun in the car... Evidence are obvious, therefore all Kidnapping and Robbery Charges "must" be reversed

F.

While driving away Pedro and Bautista decided they'll Let the rest of the accomplice Know what had happened so Bautista drove back and drove up to Mino Car and told him what had happened and Pedro ask where was Paco and Mino answer with a wink and a smile as they all Looked towards Pedro Car they all Laugh and then they Left. Pedro and Bautista arrived at The Taco Bell and Bautista told Pedro this Looks to obvious so they move to a different spot then, Pedro told Bautista "wait til I turn off the alarm them come in follow me and that how Bautista got inside The Taco Bell then Pedro went ahead and hit the Lights and walk over to where the safe was and put his key into the safe went to turn it and nothing happened. He was under the understanding that his key would over ride the "Electronic-Timer" on the safe or atlease that's what he was told. Because the next words that Pedro said in spanish were "That Lying Bitch!" Pedro next action was that of a desperate person, so he walked behind the counter grabbing some plastic bags and started opening and taking money from cash-register, and placeing it into a plastic bag. After that he hand it to Bautista and order him to get the Video Tape out of the Camera. That why when they presented the NEGATIVE of the tape it showed. Petitioner Bautista walking in with his hand down then places them in his back pockets and Just following Pedro around and watching him from a distant. And then tells Bautista where the "Hitten Video Tape" is and how to take it out with destorying the caseing. See how by his own actions and statements during this "Robbery" shows his an Accomplice and notice whos doing the "Robbery" (1) Pedro used his key to get inside. (2) He tells Bautista to wait til he turn of the alarm off! (3) He dose not turn the high Lights on. (4) He goes and trys his key on the safe. (5) He voluntary grabs a Plastic bags and starts taking money from the registers I ask the Court to Listen to his testimony of the inside man and the actions of Janette A. (for example) who ask or told him speaking of Pedro to go through the cash-register in search for money? where in his testimony dose he say Bautista ask me about the register? "NEVER"! All this he Voluntary did on his own and the worse part is telling Bautista where the Hitten Video Tape was and how to remove it without damageing the Caseing.

And as for (Janette A) Charges against Bautista they must all be revered for the mere fact that Bautista was never around Janette that night.

G.

Now Bautista and Pedro drove to Pedro Place then Pedro decided to stop and ask Bautista to wait and he ran inside and a few minutes Later Came out and got into Petitioner and request to go to the bank, Pedro then told Petitioner to wait and he walk up to the ATM and made a withdraw Bautista waited outside his Car for until Pedro return and he payed Bautista $40.00 for his services and Bautista drove him [redacted] to where Paco Mino and Janette were waiting. within second after they arrived everyone started blameing each other and pointing fingers and yelling and so on Petitioner was aware of the robbery and was a participation in it but not on the accusations Cerncerning Kidnap Rape Oral Copulation. Therefore a revered is in order and a resentencing or a New Trial is in order

Case No GA 051210

In Propia Persona
Elmer R. Bautista

Superior Court Los Angeles
County Los Angeles

Respondent to denial of writ of habeas Corpus:

In response to the denial 11-13-07, Petitioner Bautista, Intention were under good faith to bring these arguments and prove to the Superior Court, Arguments that the Appellate Court presented, Petitioner felt that they were of great interest Concerning and stating the facts of how unfair petitioners Trial had been. Therefore it was a "must-do," in petitioners behalf that he felt it was necessary to represent to the Superior Court with all these arguments and evidence of Ineffective Assistance of Counsel, and Court errors, including District Attorney misconduct; The point that Mr Bautista is hoping to do was to introduce to the Court how the Court knowingly allowed the petitioner to be used as an escaped goat, so that others may benefit. Petitioner request that the Court present proof in how said Crimes apply to Petitioner. Petitioner argued to the Court that he recieved Ineffective Assistance of Counsel and the evidence are without a doubt presented here by Petitioner. "Robbery" Not anywhere in the whole Trial dose it shows

Petitioner robbing anything he was handed a "bag to hold." But who was really robbing the "Taco Bell register" and putting the money in a "plastic bag?" And "who ask him to do it" it was "the petitioner? And why hand it to the Petitioner to hold the Petitioner not once says "give me the bag of money" And where did the money go? Did it in the whole trial stated where the money go or who ended up with it? Now let see the Numbers Martinez Claimed there were "Three Cash registers and he Claims there were $75.00 dollers on each one of them plus he threw in $10.00 dollar of his own pocket plus 300.00 from his own personal saving it comes up to $5.35.00. Now how much did Mr Bautista get paid $40.00 and that was for what? being a taxsi driver to a crime he was aware of. Therefore Mr Bautista dose not denied being a participation to the robbery, however he was not the mastermind or the robber. He was the driver yet everyone of the real Criminal received an outdate and the Trial attorney made Mr Bautista look to the Jury as if he was the mastermind behind everything. Mr Bautista intentions were for the Court to Correct this wrong doing, that had been done to an individual who because he speaks no English, reads it or writes or understands it. Gives anyone the right to take advantage his handycap. Or because he's from other County. (Kidnapping Mr Bautista presented on his declaration that's it impossible to Kidnap anyone when their the drivers or the one's giving you instructions on where to go. (Oral CPLIN by Force) The Transcripts show no where any evidence where it links Mr Bautista to this Crime. So how is it that Mr Bautista must be held responsible for counts that were impose apon him that don't apply to him in any way form or fashion, yet the Court sees no ineffective Assistance of Counsel. And the response for denial is "The Jury found him guilty of said Counts." This is not about the Jury this is about right, and wrong, this is about our Laws ignoring the Truth. They the Court states that Mr Bautista had a choice during Trial to say what he Knew, and Could have help him in his defense. Again Petitioner Bautista reminds the Court of his declaraion, he was advise by his defense attorney to say nothing therefore ineffective Assistance of Counsel is there. However again the court ignores the evidence and hide the truth by blaming the Jury.

Respectfully Submitted

signature [signature] C.D.C. No. V-34019
Date 1-3-08

VERIFICATION

STATE OF CALIFORNIA
COUNTY OF KINGS

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. 1746)

I, Elmer R. Bautista DECLARE UNDER PENALTY OF PERJURY THAT: I AM THE Petitioner IN THE ABOVE ENTITLED ACTION. I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 3-7 DAY OF 08 2008
AT CORCORAN, CALIFORNIA.

(SIGNATURE) X Elmer Bautista
(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I Elmer R Bautista AM A RESIDENT OF STATE OF CALIFORNIA, I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM / A PARTY OF THE ABOVE INTITLED ACTION. MY ADDRESS IS P.O. BOX 3471, CORCORAN, CA. 93212.

ON 1-3-7 2008 IS SERVED THE FOREGOING.

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)
ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT CORCORAN STATE PRISON.

Southern District Court
880 Front St Room 4290
San Diego Ca, 92101-8900

Attorney General
300 South Spring St
Los Angeles Ca, 90013

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 3-7-2008

X Elmer Bautista
(DECLARANT/PRISONER)

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 1983

FILING FEE PAID
Yes ___ No ✓

IFP MOTION FILED
Yes ___ No ___

COPIES SENT TO
Court ✓ ProSe

FILED
MAR 17 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ___ DEPUTY

I (a) PLAINTIFFS

Elmer R. Bautista

DEFENDANTS

D. Adam

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Elmer R. Bautista
PO Box 3471
Corcoran, CA 93212
V-34019

ATTORNEYS (IF KNOWN)

'08 CV 0495 JAH BLM

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
☐ 110 Insurance
☐ Marine
☐ Miller Act
☐ Negotiable Instrument
☐ 150 Recovery of Overpayment &Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153Recovery of Overpayment of Veterans Benefits
☐ 160 Stockholders Suits
☐ Other Contract
☐ 195 Contract Product Liability

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Eiectmant
☐ 240 Tort to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury-Medical Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☒ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (13958)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reappointment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities Exchange
☐ 875 Customer Challenge 12 USC
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State
☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND $ Check YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 3/17/2008

~~SIGNATURE OF ATTORNEY OF RECORD~~

[signature]